STATE OF NEW YORK

2182--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

Introduced by M. of A. DINOWITZ, SEAWRIGHT, PAULIN, STECK, SHIMSKY -- Multi-Sponsored by -- M. of A. SIMON -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to awarding attorneys' fees and costs in an action brought for an unlawful discriminatory practice

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 9 of section 297 of the executive law, as amended by chapter 140 of the laws of 2022, is amended to read as follows:

9. Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of appropriate jurisdiction for damages[~~, including, in cases of employment discrimination related to private employers and housing discrimination only,~~] **and may award** punitive damages, and such other remedies as may be appropriate, including any civil fines and penalties provided in subdivision four of this section, unless such person had filed a complaint hereunder or with any local commission on human rights, or with the superintendent pursuant to the provisions of section two hundred ninety-six-a of this article, provided that, where the division has dismissed such complaint on the grounds of administrative convenience, on the grounds of untimeliness, or on the grounds that the election of remedies is annulled, such person shall maintain all rights to bring suit as if no complaint had been filed with the division. At any time prior to a hearing before a hearing examiner, a person who has a complaint pending at the division may request that the division dismiss the complaint and annul [~~his or her~~] **such person's** election of remedies so that the human rights law

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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claim may be pursued in court, and the division may, upon such request, dismiss the complaint on the grounds that such person's election of an administrative remedy is annulled. Notwithstanding subdivision (a) of section two hundred four of the civil practice law and rules, if a complaint is so annulled by the division, upon the request of the party bringing such complaint before the division, such party's rights to bring such cause of action before a court of appropriate jurisdiction shall be limited by the statute of limitations in effect in such court at the time the complaint was initially filed with the division. Any party to a housing discrimination complaint shall have the right within twenty days following a determination of probable cause pursuant to subdivision two of this section to elect to have an action commenced in a civil court, and an attorney representing the division of human rights will be appointed to present the complaint in court, or, with the consent of the division, the case may be presented by complainant's attorney. A complaint filed by the equal employment opportunity commission to comply with the requirements of 42 USC 2000e-5(c) and 42 USC 12117(a) and 29 USC 633(b) shall not constitute the filing of a complaint within the meaning of this subdivision. No person who has initiated any action in a court of competent jurisdiction or who has an action pending before any administrative agency under any other law of the state based upon an act which would be an unlawful discriminatory practice under this article, may file a complaint with respect to the same grievance under this section or under section two hundred ninety-six-a of this article. In cases of housing discrimination only, a person whose complaint has been dismissed by the division after investigation for lack of jurisdiction or lack of probable cause may file the same cause of action in a court of appropriate jurisdiction pursuant to this section, unless judicial review of such dismissal has been sought pursuant to section two hundred ninety-eight of this article. The attorney general shall have the power to commence an action or proceeding in the supreme court of the state of New York, if, upon information or belief, the attorney general is of the opinion that an employer has been, is, or is about to violate the provisions regarding unlawful discriminatory retaliation pursuant to subdivision seven of section two hundred ninety-six of this article. Nothing in this section shall in any way limit rights or remedies which are otherwise available under law to the attorney general or any other person authorized to bring an action under this section.

§ 2. Subdivision 10 of section 297 of the executive law, as amended by chapter 154 of the laws of 2022, is amended to read as follows:

10. **(a)** In an action or proceeding at law under this section **the commissioner or the court shall award reasonable attorneys' fees and costs in the action to a prevailing party claiming to be aggrieved by an unlawful discriminatory practice, except that attorneys' fees shall not be awarded to the division, nor shall the division be liable to a prevailing or substantially prevailing party for attorneys' fees, except in a case in which the division is a party to the action or the proceeding in the division's capacity as an employer. Expert witness fees may be awarded in the same manner as attorneys' fees.**

(b) In an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court may in its discretion award reasonable [~~**attorney's**~~] **attorneys'** fees to any prevailing [~~**or substantially prevailing party**~~] **respondent or defendant**; provided, however, that a prevailing respondent or defendant in order to recover such reasonable [~~**attorney's**~~] **attorneys'** fees must make

a motion requesting such fees and show that the action or proceeding brought was frivolous; and further provided that in a proceeding brought in the division of human rights, the commissioner may only award [~~attorney's~~] attorneys' fees to a prevailing respondent or defendant as part of a final order after a public hearing held pursuant to subdivision four of this section. [~~In no case shall attorney's fees be awarded to the division, nor shall the division be liable to a prevailing or substantially prevailing party for attorney's fees, except in a case in which the division is a party to the action or the proceeding in the division's capacity as an employer.~~] Expert witness fees may be awarded in the same manner as [~~attorney's~~] attorneys' fees. [~~In cases of employment discrimination, a respondent shall only be liable for attorney's fees under this subdivision if the respondent has been found liable for having committed an unlawful discriminatory practice.~~] In order to find the action or proceeding to be frivolous, the court or the commissioner must find in writing one or more of the following:

[~~(a)~~] (i) the action or proceeding was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another; or

[~~(b)~~] (ii) the action or proceeding was commenced or continued in bad faith without any reasonable basis and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action or proceeding was promptly discontinued when the party or attorney learned or should have learned that the action or proceeding lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

§ 3. This act shall take effect on the thirtieth day after it shall have become a law.